

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOUISE ROGERS TATE,

INDEX NO. 07 CV 5885 (PKC)

Plaintiff,

-against-

NANA GHOSH, GOLDEN CHILD CORP, MOHD D.
FARUGUE, NAFAKTOS, INC., WAI KWOK HA,
GOLAM MORTUJA, BECK CAB CORP.

Defendants.
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ANSWER
TO
AMENDED COMPLAINT

CROSS CLAIMS

S I R S:

PLEASE TAKE NOTICE that the undersigned, Gerber & Gerber, PLLC, are retained as attorneys for the defendants, BECK CAB CORP. and GOLAM MORTUJA, and demand that you serve a copy of all papers and pleading upon the undersigned at the office and post office address set forth below.

PLEASE TAKE FURTHER NOTICE, that the Defendants as and for their Answer to the AMENDED COMPLAINT dated June 20, 2007 and filed on December 20, 2007.

FIRST: Deny each and every allegation set forth in paragraphs of the complaint, designated as follows: Paragraphs 27, 28, 29, 30, 33, 34 and refer all questions of the law to the court, 35 and refer all questions of the law to the court, first numbered paragraph 36 and refer all questions of the law to the court, first numbered paragraph 37, second paragraph numbered 36, and second numbered paragraph 37.

SECOND: Deny any knowledge or information sufficient to form a belief as to any of the allegations set forth in the paragraphs of the complaint designated as follows: Paragraphs 1, 2, 3, 4, 5, 6, 9, 10, 12, 13, 14, 16, 17, 18, 19, 20, 23, 24, 26, 29.

THIRD: The AMENDED COMPLAINT dated June 20, 2007 and filed on December 20, 2007 does not contain paragraphs numbered 31 or 32.

AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

That by reason of all of the provisions of Article 51 of the New York Comprehensive Motor Vehicle Insurance Reparations Act, Sections 5101 to 5108, this Court lacks jurisdiction over the subject matter of this action and plaintiff(s) is expressly prohibited by the above mentioned law from maintaining this action. Plaintiff has not suffered a serious injury.

AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

Pursuant to the N.Y. C.P.L.R. Section 1412 applicable herein, any damages sustained by the plaintiff(s) were caused by the culpable conduct of the plaintiff(s), including contributory negligence or assumption of the risk, and not by the culpable conduct or negligence of the answering defendant(s).

AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

That if the plaintiff suffered injury and damages in the manner and at the time and place alleged in the complaint, which this defendant denies and it be determined that said injury and damages were caused and contributed to by reason of the plaintiff's failure to use or properly use seat belts or restraining devices, pursuant to the authority of SPIER V. BARKER, 35 N.Y.2d 444, 363 N.Y.S.2d 916, defendant hereby pleads said failure in mitigation of damages.

AS AND FOR A FOURTH, SEPARATE AND DISTINCT, AFFIRMATIVE DEFENSE

Any injury or damages sustained by the plaintiff herein were caused in whole or in part by the culpable conduct of co-defendant's or parties other than this answering defendant.

AS AND FOR A FIFTH, SEPARATE AND DISTINCT, AFFIRMATIVE DEFENSE

Plaintiff fails to state a cause of action.

CROSS-COMPLAINT

PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE Rules 12 & 13, A CROSS-COMPLAINT BY DEFENDANTS BECK CAB CORP and GOLAM MORTUJA AGAINST CO-DEFENDANTS NANA GHOSH, GOLDEN CHILD CORP, MOHD D. FARUGUE, NAFAKTOS, INC., and WAI KWOK HA.

1. It is alleged in the original and amended complaint that the damages sustained by plaintiff were the result of the negligence of the defendants. The cross complaining defendant begs leave to refer to the original complaint and the amended complaint at the time of the trial.

2. If any plaintiff was caused to sustain the damages as alleged in the complaint, said damages will have been sustained by reason of the negligence of the co-defendants NANA GHOSH, GOLDEN CHILD CORP, MOHD D. FARUGUE, NAFAKTOS, INC., and WAI KWOK HA.

3. If the cross-complaining defendant is also found negligent, then this defendant will be entitled to be indemnified, in whole or in part, by the aforesaid co-defendants for the portion of the plaintiff's damages which were caused by the negligent co-defendants, together with all attorneys fees, costs of investigation and disbursements.

WHEREFORE, the defendants BEC CAB CORPORATION and GOLAM MORTUJA demands judgment against the plaintiff, dismissing the complaint herein, or, if said defendants are found liable to Plaintiff herein, judgment on defendants BECK CAB CORP.'s and GOLAM MORTUJA's cross-claim against NANA GHOSH, GOLDEN CHILD CORP, MOHD D. FARUGUE, NAFAKTOS, INC., and WAI KWOK HA., Co-Defendants herein, together with attorneys fees, costs and disbursements of this action and such other and further relief as this court deems just and proper in the premises.

Dated: Brooklyn, New York
January 16, 2008

Yours, etc.

GERBER & GERBER, PLLC
Attorneys for Defendant, BECK CAB CORP and GOLAM MORTUJA
26 Court Street, Suite 1405
Brooklyn, New York 11242
718-834-0559


BY: FIDEL F. DEL VALLE, ESQ. (FD 1049)

TO: JON L. NORINSBERG, ESQ.
Attorney for Plaintiff
225 Broadway, Suite 2700
New York, New York 10007
(212) 791-5396

Jordan Hecht, Esq.
HECHT, KLEEGER, PINTEL & DAMASHEK
Attorneys for Plaintiff
19 West 44th Street
New York, NY 10036
(212) 490-5700

MARJOTIE E. BORNES, ESQ.
Attorney for Defendants NANA GHOSH and GOLDEN CHILD CORP
330 West 43th Street, 7th Floor
New York, NY 10001

PHILIP J. RIZZUTO, ESQ.
Attorney for Defendant WAI KWOK HA
One Old Country Road - Suite 285
Carle Place, New York 11514
(516) 622-0606

BAKER, McEVOY, MORRISSEY & MOSKOVITS, P.C.
Attorneys for Defendant MOHD D. FARUGUE
330 West 34th Street, 7th Floor
New York, NY 10001

SCHIRMER & STATHOPOULOS, PC
Attorneys for Defendant ARISTDIS SHIMENOS
36-12 34th Street, Suite 300
Long Island City, NY 11106
(718) 707-2915

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Plaintiff,

-against-

NANA GHOSH, GOLDEN CHILD CORP, MOHD D. FARUGUE, NAFFAKTOS, INC., WAI
KWOK HA, GOLAM MORTUJA, BECK CAB CORP.

Defendants.

NOTICE OF APPEARANCE, ANSWER, CROSSCLAIM & DEMANDS

Yours, etc.

GERBER & GERBER, PLLC

Attorneys for Defendants, BEC CAB CORP and GOLAM MORTUJA

26 Court Street, Suite 1405

Brooklyn, New York 11242

718-834-0559

BY: FIDEL F. DEL VALLE, ESQ.

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STATE OF NEW YORK, COUNTY OF KINGS: ss.:

FIDEL F. DEL VALLE, ESQ., an attorney admitted to the practice of law before the various Courts of the State of New York and the United States District Court for the Southern District of New York, hereby affirms, pursuant to the C.P.L.R., under penalty of perjury, the following to be true:

On January 16, 2008, affirmant served the within ANSWER TO AMENDED COMPLAINT upon: Plaintiff's attorneys, Attorneys for Co-Defendants NANA GHOSH, GOLDEN CHILD CORP., MOHD D. FARUGUE, NAFFAKTOS, INC., and WAI KWOK HA electronically by filing electronically with the Clerk of the Court, and therefore available for copying by the other parties in this case:

Dated: Brooklyn, New York
January 16, 2008


FIDEL F. DEL VALLE, ESQ. (FD1049)

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ATTORNEY'S VERIFICATION

STATE OF NEW YORK, COUNTY OF KINGS: ss.:

The undersigned, an attorney admitted to practice in the Courts of New York State, and the United States District Court for the Southern District of New York, hereby affirms, subject to the penalties of perjury: Affirmant is associated with Gerber & Gerber, PLLC, the attorneys of record for BECK CAB CORP and GOLAM MORTUJA, named defendants, in the within action; Affirmant has read the foregoing VERIFIED ANSWER, DEFENSES, & CROSSCLAIM and knows the contents thereof; same is true to affirmant's own knowledge, except as to the matters therein alleged on information and belief, and that as to those matters alleged on information and belief, affirmant believes them to be true. Affirmant further says that the reason this verification is made by affirmant and not by defendant is because the said defendant does not reside in the county wherein counsel has his office, to wit, the COUNTY OF KINGS, New York. The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: Based upon the contents of our file.

Dated: Brooklyn, New York
January 16, 2008


FIDEL F. DEL VALLE, ESQ. (FD1049)